

Department of Public Health
and Human Services

Section:
HOUSEHOLD COMPOSITION

TANF CASH ASSISTANCE

Subject:
Marital Status/Joint Custody

Supersedes: TANF 201-2 07/01/03)

References: ARM 37.78.102, .103 and .208

GENERAL RULE—An application on behalf of a minor child must include certain relatives living with the minor child. These family members related to the minor child by blood, adoption or marriage to the child's natural/adoptive parent, are considered to be a **filing unit**. The income, resources, and nonfinancial criteria of these relatives are evaluated in the determination of eligibility and/or benefit payment (grant).

Minor children who usually live with a custodial caretaker relative and are visiting their other parent (or other caretaker relative) for a temporary visit are not considered to be living with the second parent or caretaker relative. They are 'temporarily absent' from their custodial parent, and could be eligible in the custodial parent's household.

EXAMPLE: Minor child normally lives with his mother. Each summer he goes to visit his father. During his absence from his mother's home, he is still considered to be living with his mother. If his father applied for TANF cash assistance, the father's application would be denied (even if the child's mother was not on assistance) if he was the only minor child in his father's home.

NOTE: A minor child is defined as a child under age 18 (or if age 18, is attending secondary school or its equivalent, full-time) **and** is living with a specified caretaker relative (Sections 304-1 and 305-1).

MARITAL STATUS Marital status only needs to be verified if questionable. A marriage license, divorce decree, separation agreement or other documentation which establishes the relationship could be used as verification. Document status in TEAMS Case Notes (CANO).

NOTE: Same sex marriages are not recognized under Montana State Law.

COMMON LAW MARRIAGE In Montana, a man and a woman who have not gone through a formal marriage ceremony may enter into a legally binding common law marriage.

For a common law marriage to exist, 3 elements must be present:

1. Consent and agreement - the man and woman must have mutually agreed and consented to enter into a marriage relationship,

NOTE: A common law marriage is NOT created simply because a man and woman live together and act as if they were married even if they have children in common. The parties must INTEND to enter into marriage.

2. Competency - both were legally competent to enter into a marriage, and

NOTE: Each of the parties must be old enough to marry and not married to anyone else to enter into a valid common law marriage.

3. Cohabitation and holding themselves out as married.

The parties must live together and hold themselves out to relatives, friends, neighbors, co-workers and the public as being married. Merely living together or having children together is NOT indicative that a common law marriage exists. There must be evidence that the parties hold themselves out as a married couple. Evidence that they do hold themselves out as married may include:

- a. using the same last name;
- b. referring to each other as husband and wife when introducing each other or talking to others;
- c. listing each other as spouse on health or life insurance policies, loan or credit applications, tax returns, and other documents.

NOTE: Owning property such as a house or car jointly with another person is NOT evidence that they are holding themselves out as married unless the deed, title or other proof of ownership indicates that they own the property as husband and wife.

PROVING COMMON LAW

The most important element of the common law marriage, and the hardest to prove, is that the parties intended at some specific point in time to enter

MARRIAGE

into a marriage. If the Office of Public Assistance (OPA) alleges that an applicant or participant has entered into a common law marriage, the OPA has the burden of proving that the three necessary elements of a common law marriage are present, including intent.

Under Montana law (26-1-602(30) MCA), there is a presumption that a man and woman who behave as if they were married have entered into a lawful contract of marriage. However, this presumption can be overcome by evidence to the contrary.

Often there will be conflicting evidence as to whether the parties held themselves out as married. For example, the woman may continue to use her own name in some situations but use the alleged husband's name at other times, or the parties may list each other as the spouse on some documents but not others. In these instances, a court or hearing officer may find that a common law marriage does NOT exist.

DOCUMENTATION REQUIREMENTS– If the three elements are present, request a written statement from the parties attesting to these facts. Document action in TEAMS Case Notes (CANO). If the three elements are not present in the alleged relationship, do not establish common law marriage. Document the status in TEAMS Case Notes (CANO).

NOTE: Even in cases with considerable evidence the parties did hold themselves out as husband and wife at least part of the time, courts have held that NO common law marriage existed. If there is any questionable evidence, do not consider the parties to be common law married.

≥JOINT CUSTODY / 50/50 CUSTODY

A "joint custody" agreement legally provides that both parents function as providers of maintenance, physical care, and guidance for the child(ren). The custody arrangements only needs to be investigated when a question exists about who is the primary custodial parent (e.g., a divorce decree or parenting plan indicates joint custody, a complaint is received by one of the parents, the applicant or participant indicates that they share the child(ren), etc.)

For the purposes of determining filing unit, the determination must be made, if custody is shared 50/50 between the parents, and is not dependent upon legal document designation of joint custody. A thorough investigation of visitation schedules must be made to determine the actual custodial arrangements. The minor child must be living with the primary custodial natural/adoptive/step-parent or other specified caretaker relative the **substantially greater** part of each benefit month (three or more days per month more than the other custodial parent), when examined on an annual basis.

The preferred form of verification of the visitation schedules is to obtain statements from both custodial parents, because of child support issues. However, in instances of documented domestic violence, a statement can be obtained from at least one individual who has personal knowledge of the visitation schedule. The statement should provide details about the visitation schedule, including specifically the days which each parent is scheduled to spend with the child. The statement should also explain why the individual has reason to know what the visitation schedule is.

Once the visitation schedule is established the Eligibility Case Manager must determine if custody is shared 50/50 between the parents. The visitation schedule needs to be examined on a prospected annual basis.

EXAMPLES: The visitation schedule is that each parent has the child(ren) every other week. When examined on an annual basis, each parent has the child 26 weeks per year and this is considered 50/50 custody. **OR**

The visitation schedule is that the mother has the child(ren) Monday through Friday and the father has the child(ren) every weekend. This would not be considered 50/50 custody.

If one parent is providing care for the child(ren) during the other parents scheduled visitation in-lieu-of hiring a child care provider, credit is given to the parent with the scheduled visitation.

For example, the visitation schedule is that each parent has the child(ren) every other week. During the father's regularly scheduled visitation, the mother provides care for the child(ren) while the father is working. Credit is still given to the father as being the custodial parent for that week.

NOTE: The number of meals provided by one parent or the other is not considered in determining shared custody for TANF cash assistance.

Once the custodial parent designation is made, it remains in place until relinquished/changed by the custodial parent. This designation may be relinquished through any of the following actions:

1. by the court;
2. by written agreement with another specified relative (who could be the other parent), who has assumed the care of the child; or

3. by the Department through verification the child no longer resides with the initially designated relative.

If custody is shared equally by the child's parents, the filing unit must include both parents, their respective spouses and children. Everyone must meet all nonfinancial and financial criteria. Under these circumstances, because of the expanded filing unit, eligibility may not exist.

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